

AMENDED IN ASSEMBLY MAY 5, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1523

Introduced by Assembly Member Charles Calderon

February 27, 2009

An act to add ~~Section 6376.3~~ *Sections 6376.3 and 6376.4* to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1523, as amended, Charles Calderon. Sales and use taxes: exemption: fixed price contract.

Existing law imposes a state sales and use tax on retailers and on the storage, use, or other consumption of tangible personal property in this state at the rate of 6¼% of the gross receipts from the retail sale of tangible personal property in this state and of the sales price of tangible personal property purchased from any retailer for storage, use, or other consumption in this state.

This bill would, during the period of a 1% sales and use tax increase above the rate of 6¼%, exclude from that 1% rate of tax, the gross receipts from certain sales and uses of tangible personal property that are subject to a fixed price pursuant to a contract entered into prior to the operative date of the sales and use tax increase.

~~Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.~~

~~Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.~~

~~This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.~~

This bill would also, for any increase in the sales and use tax rate on and after January 1, 2010, exclude from that increased rate of tax, the gross receipts from certain sales and uses of tangible personal property that are subject to a fixed price pursuant to a contract entered into prior to the operative date of the sales and use tax increase.

This bill would make certain legislative findings and declarations that a fixed price contract exemption serves a statewide public purpose.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6376.3 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6376.3. From the operative date of the act adding Sections
- 4 6051.7 and 6201.7, to the date on which the taxes imposed by
- 5 Sections 6051.7 and 6201.7 cease to be operative, there is exempted
- 6 from the taxes imposed by this part an amount equal to an amount
- 7 that is attributable to a 1 percent rate of tax with respect to the
- 8 following:
- 9 (a) The gross receipts from the sale of, and the storage, use, or
- 10 other consumption in this state of, the following:
- 11 (1) Tangible personal property, if the seller is obligated to
- 12 furnish or the purchaser is obligated to purchase the property for
- 13 a fixed price pursuant to a contract entered into prior to the
- 14 operative date of the act adding Sections 6051.7 and 6201.7.
- 15 (2) Materials and fixtures obligated pursuant to an engineering
- 16 construction contract or a building construction contract entered
- 17 into for a fixed price prior to the operative date of the act adding
- 18 Sections 6051.7 and 6201.7.
- 19 For purposes of this subdivision, tangible personal property shall
- 20 not be deemed obligated pursuant to a contract for any period of

time for which any party to the contract has the right to terminate the contract upon notice, whether or not the right is exercised.

(b) A lease of tangible personal property that is a continuing sale of the property for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of the act adding Sections 6051.7 and 6201.7. For purposes of this subdivision, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not that right is exercised.

(c) The possession of, or the exercise of, any right or power over tangible personal property pursuant to a lease that is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to the operative date of the act adding Sections 6051.7 and 6201.7. For purposes of this subdivision, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.

SEC. 2. Section 6376.4 is added to the Revenue and Taxation Code, to read:

6376.4. On and after January 1, 2010, from the operative date of an act that increases the sales and use tax rate, to the date on which the taxes imposed by that act ceases to be operative, there are exempted from the taxes imposed by this part an amount equal to an amount that is attributable to the rate of tax imposed with respect to the following:

(a) The gross receipts from the sale of, and the storage, use, or other consumption in this state of, the following:

(1) Tangible personal property, if the seller is obligated to furnish or the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to July 1, 1993.

(2) Materials and fixtures obligated pursuant to an engineering construction contract or a building construction contract entered

1 into for a fixed price prior to the operative date of the act that
2 increased the sales and use tax rate.

3 For purposes of this subdivision, tangible personal property
4 shall not be deemed obligated pursuant to a contract for any period
5 of time for which any party to the contract has the right to
6 terminate the contract upon notice, whether or not the right is
7 exercised.

8 (b) A lease of tangible personal property that is a continuing
9 sale of the property for any period of time for which the lessor is
10 obligated to lease the property for an amount fixed by the lease
11 prior to the operative date of the act that increased the sales and
12 use tax rate. For purposes of this subdivision, the sale or lease of
13 tangible personal property shall be deemed not to be obligated
14 pursuant to a contract or lease for any period of time for which
15 any party to the contract or lease has the unconditional right to
16 terminate the contract or lease upon notice, whether or not that
17 right is exercised.

18 (c) The possession of, or the exercise of, any right or power
19 over tangible personal property pursuant to a lease that is a
20 continuing purchase of the property for any period of time for
21 which the lessee is obligated to lease the property for an amount
22 fixed by a lease entered into prior to the operative date of the act
23 that increased the sales and use tax rate. For purposes of this
24 subdivision, the storage, use, or other consumption of, or
25 possession of, or exercise of any right or power over, tangible
26 personal property shall be deemed not to be obligated pursuant
27 to a contract or lease for any period of time for which any party
28 to the contract or lease has the unconditional right to terminate
29 the contract or lease upon notice, whether or not the right is
30 exercised.

31 SEC. 3. The Legislature finds and declares that Section 1 of
32 this act fulfills a statewide public purpose because of the following:

33 This act provides necessary relief to the retailers or contractors
34 who entered into a fixed price contract or a fixed price lease
35 agreement prior to the operative date of the 1 percent sales and
36 use tax increase above the rate of 6.25 percent. A fixed price
37 contract exemption would protect the business expectations of
38 parties who enter into fixed price contracts and protect them from
39 an unplanned increase in the tax rate.

1 ~~SEC. 2. Notwithstanding Section 2230 of the Revenue and~~
2 ~~Taxation Code, no appropriation is made by this act and the state~~
3 ~~shall not reimburse any local agency for any sales and use tax~~
4 ~~revenues lost by it under this act.~~

5 ~~SEC. 3.~~

6 *SEC. 4.* This act provides for a tax levy within the meaning of
7 Article IV of the Constitution and shall go into immediate effect.

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